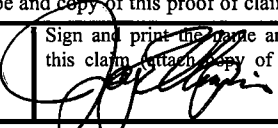


UNITED STATES BANKRUPTCY COURT     Southern     DISTRICT OF     Texas		<b>PROOF OF CLAIM</b>
Name of Debtor <p style="text-align: center;">In re Asarco LLC, et al.</p>		Case Number <p style="text-align: center;">05-21207</p>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <p style="text-align: center;">United States of America</p>		<div style="border: 1px solid black; padding: 5px;"> <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.         </div>
Name and address where notices should be sent: <p style="text-align: center;">David L. Dain, Esq.          United States Department of Justice/ENRD/EES          P.O. Box 7611 -- Ben Franklin Station          Washington, DC 20044-7611</p>		
Telephone number:     (202) 514-3644		
Account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces if this claim     a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> See Attached		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold  <input type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input type="checkbox"/> Other _____         </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Last four digits of SS #: _____            Unpaid compensation for services performed from _____ to _____  <div style="display: flex; justify-content: space-between; width: 100%;"> <span>(date)</span> <span>(date)</span> </div> </div> </div>		
<b>2. Date debt was incurred:</b> <p style="text-align: center;">See Attached</p>		<b>3. If court judgment, date obtained:</b> <p style="text-align: center;">See Attached</p>
<b>4. Total Amount of Claim at Time Case Filed: \$</b> See Attached <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(unsecured)</span> <span>(secured)</span> <span>(priority)</span> <span>(Total)</span> </div> <p style="font-size: x-small;">If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> See Attached <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub L. 109-8.</small>
<b>6. Unsecured Nonpriority Claim \$</b> See Attached <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <p style="text-align: center;">02/16/2006</p>		Sign and print the name and title, if any, of the creditor or other person authorized to file this claim. Attach copy of power of attorney, if any): <div style="text-align: center;">             Senior Counsel, U.S. Dept. of Justice/ENRD/EES         </div>

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>In re:</b>	§	<b>Case No. 05-21207</b>
	§	
<b>ASARCO LLC, <i>et al.</i></b>	§	<b>Chapter 11</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>
	§	

**INITIAL PROOF OF CLAIM (SECURED) OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT  
OF AGRICULTURE, AND DEPARTMENT OF INTERIOR**

The United States of America, for and on behalf of the United States Environmental Protection Agency (“EPA”), the United States Department of Agriculture (“USDA”), and the Department of Interior (“DOI”), files this Initial Proof of Claim (Secured) in the amount of \$48 million, as a secured claim, against debtor ASARCO LLC.

**Introduction**

1. This Initial Proof of Claim (“POC”) is filed as a secured claim under a right of setoff pursuant to the common law, 11 U.S.C. §§ 106(c), 506, and/or 553, and/or 26 U.S.C. § 6402(d), and/or 31 U.S.C. §3720A against, and to the extent of, the \$48 million federal tax refund described in Paragraph 3 which follows, plus any additional amount payable for tax years ending prior to the date of debtor’s bankruptcy petition. The identification of any sums subject to set-off is without prejudice to any other right to set off against this claim debts owed to the debtor by the Department of Treasury or any other federal agency.

2. ASARCO Incorporated, a New Jersey corporation (“ASARCO NJ”), was merged with and into ASARCO LLC, a Delaware limited liability company (the “debtor”), pursuant to an Agreement and Plan of Merger Certificate of Merger dated February 17, 2005 (“Merger

Agreement”). As a result of the merger ASARCO NJ ceased to exist, and ASARCO LLC, *inter alia*, became “responsible and liable for all the liabilities and obligations of [ASARCO NJ], and any claim existing or action or proceeding pending by or against [ASARCO NJ] may be prosecuted as if the Merger had not taken place, or [ASARCO LLC] may be substituted in its place . . . .” Merger Agreement § 2.1(e). ASARCO LLC, separately and as the successor of ASARCO NJ, will be referred to herein as “Debtor” or “Asarco.”

3. On November 11, 2005, Debtor filed a Schedule of Assets, Docket No. 847, Schedule B - Personal Property, Ex. B-20, p. 1, n.4, which indicates that Asarco applied for a federal tax refund relating to the carry back of certain product liability expenses in the amount of \$48,929,391, of which the IRS has approved \$48 million of the amount applied for (hereinafter referred to as the “federal tax refund”).

4. This POC is only a partial claim regarding some of Asarco’s environmental liabilities to the United States in large part under consent decrees, judgments, or administrative orders, and is for response costs and costs of assessment of injuries to natural resources under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, incurred by the United States at those sites and through the dates specified below, together with applicable accrued interest. In addition, Asarco’s liability for stipulated penalties for violation of a consent decree and administrative order on consent (“AOC”) at one site, and for statutory penalties and treble damages for Asarco’s violation of a unilateral administrative order (“UAO”) at another site, is also included in this POC. Asarco has or may have additional liability, not included in the amount claimed in this POC, at one or more of the sites which are referenced in this POC, for stipulated penalties, treble damages, statutory

penalties, or injunctive or regulatory obligations under or related to the consent decrees, judgments, administrative orders, and environmental laws. Unless explicitly asserted in this POC, however, such additional liability of Asarco is not addressed in this filing, but may be asserted in the future. For convenience, a table summarizing Asarco's liabilities which are included in this POC is appended.

5. The United States reserves the right to amend and supplement this proof of claim in the future to include any additional claims, including but not limited to additional liability for response or assessment costs at the sites described below, and also liability for response or assessment costs at additional sites, and any other claims the United States has against Asarco.

**Azurite Mine Site**

6. The Azurite Mine Site is located in Whatcom County, Washington within the Mt. Baker-Snoqualmie National Forest on National Forest System ("NFS") lands administered by the USDA Forest Service ("Forest Service"). Asarco leased the site in 1934, constructed a mill, mined and milled approximately 72,700 tons of ore at the site, and disposed of mine waste and tailings at the site until abandoning it in 1940. The Site includes Asarco's former mill site and mine waste piles, including waste rock and tailings which are located adjacent to Mill Creek, and which have migrated downslope toward and into a channel of Mill Creek.

7. At the time of disposal of hazardous substances Asarco owned and/or operated the site, the mill, and/or the mine waste piles, all of which constitute "facilities" within the meaning of CERCLA. There have been "releases" or "threatened releases" of "hazardous substances," including arsenic, copper, and lead, from mine waste piles at and from the Site to adjacent federal lands, Mill Creek, and other surface water and groundwater as these terms are

defined by CERCLA. Asarco is liable as a past owner and/or operator pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8. In June 2005, Asarco entered into an Administrative Order on Consent (“AOC”) with the Forest Service to conduct an Engineering Evaluation/Cost Analysis for the site, and to reimburse the Forest Service for the agency’s response costs incurred in connection with administering the administrative order.

9. The Forest Service has incurred response costs, not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300, as amended (the “NCP”), at the Site for, among other things, conducting a Site Inspection, researching potentially liable parties under CERCLA, and in overseeing Asarco’s work at the site. As of November 30, 2005, the Forest Service has incurred \$219,410 in past response costs at the Site. Asarco is liable to the United States for this amount, plus interest.

#### **Black Pine Mine Site**

10. The Black Pine Mine Site is part of the larger Black Pine Mine Complex. The Black Pine Mine is located in the Beaverhead-Deerlodge National Forest about 8 miles northwest of Phillipsburg, Montana. Most of the Black Pine Mine Site is located on private land, but mine waste containing hazardous substances has migrated onto adjacent NFS lands administered by the Forest Service. The site includes mill tailings and a large mine waste rock dump and associated seep.

11. Asarco acquired the ownership of mining claims comprising the Black Pine Mine in 1990, and approximately 38 acres of adjacent NFS lands necessary for the construction of a water treatment system to treat contaminated seeps from mine waste rock. There have been

“releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, at and from the Black Pine Mine Site. Asarco is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as an owner and/or operator of the Black Pine Mine Site and associated and mine waste dump, which constitute “facilities” within the meaning of CERCLA.

12. The Forest Service has incurred, not inconsistent with the NCP, \$21,500 through September 30, 2005 in response costs at the Black Pine Mine Site in coordinating CERCLA cleanup activities with the State of Montana and Asarco and for which Asarco is liable to the United States.

**Bunker Hill Superfund Facility/Coeur d’Alene Basin**

13. EPA listed the Bunker Hill Superfund Facility (“Bunker Hill Facility”) on the NPL in 1983. The Bunker Hill Facility is located in the Coeur d’Alene Basin (“Basin”) in northern Idaho. The Bunker Hill Facility includes areas contaminated with mine waste within the Coeur d’Alene River corridor and tributaries, adjacent flood plains, including lateral lakes and associated wetlands, Coeur d’Alene Lake, fill areas and the 21-square mile area that surrounds the Bunker Hill Mine and Smelting Complex that has come to be known as the Bunker Hill “Box.” The Bunker Hill Facility covers approximately 166 river miles as well as those areas where mine waste was moved either naturally by erosion and sedimentation or mechanically by man. The primary contaminants of concern are lead, arsenic, cadmium, and zinc. Children have been exposed to lead in residential and recreational area soils, resulting in significantly elevated blood lead levels. Ambient Water Quality Criteria are exceeded throughout the Upper Basin, with about 20 miles of streams unable to sustain a reproducing fish population and about 10 miles of tributaries virtually devoid of aquatic life. Lead poisoning is responsible for a

significant number of water fowl deaths each year, and more than 15,000 acres of wildlife habitat contain sediments/soils which are acutely toxic to waterfowl.

14. Mining activities began in the Basin over 100 years ago. The Basin was one of the leading silver, lead, and zinc-producing areas in the world. Approximately 1.2 billion ounces of silver, 8 million tons of lead, and 3.2 million tons of zinc were mined in the Basin. Mining and milling activities were primarily conducted along the South Fork of the Coeur d'Alene River and two of its major tributaries, Nine Mile Creek and Canyon Creek. Some mining and milling activities were also conducted along the North Fork of the Coeur d'Alene River. The Bunker Hill Mine and Smelting Complex, located in Kellogg, Idaho, was the largest mineral processing facility in the Basin and included milling and smelting operations. Most of the mining and milling operations no longer operate, and the Bunker Hill Mine and Smelter Complex has been demolished.

15. The Bunker Hill facility, including mines, mills, and other structures within the Basin at which mining and metal processing has occurred and all areas within the Basin where hazardous substances released from those mines and mills have come to be located, is a "facility" within the meaning of CERCLA.

16. Asarco "owned" and/or "operated" several mine and mill sites within the Bunker Hill Facility at the time of the disposal of, and from which there have been released, "hazardous substances" as these terms are defined by CERCLA, including: the Morning Mine and Mill Site located adjacent to Grouse Creek and the South Fork near the town of Mullan; the Tiger-Poorman Mine and Mill Site located along Canyon Creek; the Standard-Mammoth Mine and Mill Site located approximately four miles up Canyon Creek from Wallace; the Helena-Frisco Mine and Mill Site located adjacent to Canyon Creek; the Coeur Mine and Mill Site located on

Shields Creek, a tributary of the South Fork, and near the town of Osburn; the Galena Mine and Mill Site located one mile up Lake Creek from the South Fork of the Coeur d'Alene River and approximately two miles southeast of the town of Osburn; the Galena and Osborn tailings impoundments located near the Galena Mine and Mill; the Last Chance Mine and Mill Site located adjacent to Milo Creek and Deadwood Gulch, adjacent to the town of Wardner and south of Kellogg, Idaho; the Sweeney Mill located near the South Fork of the Coeur d'Alene River at the mouth of Government Gulch; the Page Mine, the Blackhawk Mine, and the Page Mill located two miles southwest of Smelterville and near the South Fork; Page Ponds, a tailings impoundment built in a natural wetlands located near the Page Mill; and the Jack Waite Mine Site located adjacent to the North Fork.

17. Until 1968, most tailings were discharged directly into the South Fork of the Coeur d'Alene River. An estimated 62 million tons of tailings were discharged to streams prior to 1968, containing approximately 880,000 tons of lead and 720,000 tons of zinc. The United States District Court for the District of Idaho has found that Asarco is responsible for at least 22% of such tailings released into the waterways of the Basin. *See Coeur d'Alene Tribe v. ASARCO Inc.*, 280 F. Supp. 2d 1094, 1105 n.10 (D. Idaho 2003). As set forth below, the United States reserves all rights pending a possible appeal of that decision.

18. EPA first focused its remedial efforts on the Bunker Hill Box, and divided its investigation into two operable units (OU). OU1 is referred to as the Populated Areas of the Box and includes the communities of Kellogg, Wardner, Smelterville, Pinehurst, Page, Elizabeth Park, Ross Ranch, and Montgomery Gulch. OU2 is referred to as the Non-Populated Area of the Box and Includes the Bunker Hill Mine and Smelter Complex. EPA issued records of decision ("ROD") for OU1 in 1992 and for OU2 in 1992.



19. In 1994, the United States and the State of Idaho entered into a Consent Decree with Asarco and Hecla Mining Company (“Hecla”) requiring Asarco and Hecla, jointly and severally, to implement EPA’s OU1 ROD to complete the environmental cleanup of the Populated Areas of the Box, portions of EPA’s OU2 ROD for the Non-Populated Areas of the Box, and to reimburse EPA for its response costs associated with overseeing or, in the event of the mining companies’ non-compliance, taking over the performance of work. The Consent Decree was approved and entered by the United States District Court for the District of Idaho in 1994 (the “1994 Bunker Hill Decree”). Two years later Asarco and Hecla requested the court modify the 1994 Bunker Hill Decree under Rule 60(b)(5), Fed. R. Civ. P. The court granted the mining companies’ request, and reduced their obligations to complete the remedial work pursuant to the 1994 Bunker Hill Decree by 20%. The Ninth Circuit Court of Appeals reversed the District Court’s modification, thus reinstating the initial terms of the 1994 Bunker Hill Decree. *See United States v. ASARCO Inc.*, 430 F.3d 972 (9th Cir. 2005).

20. Asarco violated the 1994 Bunker Hill Decree by, among other things, failing to perform work pursuant to its terms. Pursuant to the terms of the 1994 Bunker Hill Decree, EPA incurred, not inconsistent with the NCP, at least \$13,062,830 through March 31, 2005, plus an additional amount of \$296,310 incurred by the U.S. Army Corps Engineers through January 11, 2005 in performing consent decree work on behalf of EPA, for a total of \$13,359,140. Asarco is jointly and severally liable to the United States for such costs pursuant to the terms of the 1994 Bunker Hill Decree, as reinstated by the Ninth Circuit Court of Appeals.

21. EPA initially attempted to address contamination areas in the Basin outside the Box through the so-called Coeur d’Alene Restoration Project involving multiple federal, state, and local CERCLA removal and other multi-media actions to address the widespread

contamination in the Basin. Asarco entered into AOCs with EPA for the performance of removal actions at the Jack Waite Mine and Gem Portal, under which, among other things, Asarco is obligated to pay EPA's costs of overseeing Asarco's work. EPA incurred \$3,595 in costs to oversee Asarco's work under these two AOCs through July 31, 2005. EPA also incurred additional response costs, not inconsistent with the NCP, of overseeing Asarco's removal action at the Frisco Mine and Mill in the amount of \$1,599 through July 5, 2005. EPA incurred a total of \$5,194 associated with overseeing Asarco's response actions at these mine sites.

22. EPA later concluded a comprehensive remedial program was necessary to address the risks to human health and the environment in the Basin, and in 1998 initiated a Basin Remedial Investigation and Feasibility Study ("RI/FS"). After completing the RI/FS, EPA selected an interim remedial action, commonly referred to as the "Basin ROD," for an area designated as OU 3. The Basin ROD selected a final remedial action for the protection of human health in the communities and residential areas, including identified recreational areas, of the Upper Basin (the area east of the Box), the Lower Basin (the area between the Box and Lake Coeur d'Alene), and the area upstream of the Upriver Dam in the Spokane River. The Basin ROD also selected a remedy to address, in a phased approach, ecological protection in the Upper Basin, Lower Basin, and the Spokane River between the Upriver Dam and the Washington/Idaho state border.

23. The Basin includes lands or natural resources managed by, among others, DOI, through the United States Fish and Wildlife Service and the Bureau of Land Management, and the USDA Forest Service, who are the designated trustees with respect to such lands and natural resources (collectively the "Trustees"). The Trustees have engaged in many activities to assess the injuries to, and destruction of, and loss of, natural resources in the Basin. For example, the

Trustees initiated natural resource damage assessment activities in the Basin with a *Preassessment Screen* issued in April 1991. Next, the Trustees issued a *Notice of Intent to Perform Damage Assessment*, which was provided to Asarco and others inviting their participation in subsequent natural resource injury assessment activities. As Asarco and others did not accept this invitation, the Trustees subsequently prepared a report entitled *Coeur d'Alene Basin Natural Resource Damage Assessment Plan, Phase I-Injury Determination* in October 1993, with a *Phase II Plan, Injury Quantification and Damage Determination* published in June, 1996. Extensive scientific studies were conducted by the trustees pursuant to these publicly reviewed plans. The results of these studies were integrated in an October 2000 *Record of Assessment and Injury Determination* for the Basin documenting extensive injury caused by releases of hazardous substances, notably lead and arsenic, from facilities owned and operated by Asarco and others in the Basin.

24. ASARCO is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs of removal or remedial actions, including enforcement actions, incurred by the United States not inconsistent with the NCP, and also all damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss. Asarco's liability as a CERCLA owner/operator to the United States for response costs, natural resource damages and costs of assessing such damages, not covered by the 1994 Bunker Hill Decree, has already been established by the United States District Court for the District of Idaho. *See United States v. Asarco Inc.*, Case Nos. CV 91-0342-N0EJL and CV 96-0122-N-EJL (consolidated cases), 280 F. Supp. 2d 1094, 1104 - 5, 1135 (D. Idaho 2003). The court did, however, find liability to be divisible, and apportioned a 22% share to Asarco. *Id.* at 1119 - 21. The next phase of the trial will address the amount of response costs, costs of assessing natural

resource damages, and the amount of natural resources damages recoverable as a judgment against Asarco. For purposes of this POC only, the United States conservatively applies the court's divisibility ruling, but does not thereby waive, but rather reserves, all rights pending the conclusion of a possible appeal.

25. Through July 31, 2005, EPA has incurred, not inconsistent with the NCP, at least \$68,508,027 in performing the RI/FS, formulating and issuing the Basin ROD, and in implementing the Basin ROD for OU3 of the Bunker Hill Facility. In addition, EPA has incurred, not inconsistent with the NCP, at least \$11,123,453 in performing emergency removal actions to protect human health in residential and common use areas of OU3, for a total of \$79,631,480. For purposes of this POC the United States conservatively claims only 22% of such costs pursuant to the court's divisibility ruling. In sum, Asarco owes the United States at least \$17,518,926 for response costs incurred in connection at OU3 of the Bunker Hill Facility.

26. EPA, and the United States on behalf of EPA, has incurred enforcement costs, which are CERCLA response costs, in connection with the Basin as described above. Through August 30, 2005, the United States has incurred, not inconsistent with the NCP, a total of \$23,447,801. For purposes of this POC the United States conservatively claims only 22% of such costs pursuant to the court's divisibility ruling. In sum, Asarco owes the United States at least \$5,158,516 for the United States' enforcement costs.

27. DOI and the USDA Forest Service have incurred costs associated with natural resource damage assessment and restoration planning activities in the Basin, including but not limited to performing those activities described in paragraph 23 above. DOI has incurred a total amount of \$11,606,833 as reasonable costs for these activities through August 31, 2003. The USDA Forest Service has incurred \$555,640 as reasonable costs for these activities through

December 21, 2005. For purposes of this POC the United States conservatively claims only 22% of such costs pursuant to the court's divisibility ruling. In sum, Asarco owes the United States at least \$2,553,503 for DOI's costs, and \$122,241 for the Forest Service's costs, of assessing injuries to natural resources in the Basin under their respective trusteeship.

**California Gulch Superfund Site/Arkansas River Basin**

28. EPA placed the California Gulch Superfund Site ("California Gulch Site") on the NPL in 1993. The California Gulch Site is approximately 18 square miles in size, encompassing the City of Leadville, Colorado, much of the Leadville (also known as the California Gulch) Historic Mining District, and an 11-mile segment of the Arkansas River and its associated flood plain below the confluence of the Arkansas River with the California Gulch drainage.

29. At various times from 1899 to the present Asarco owned and/or operated, at the time of the disposal of hazardous substances, numerous mining, milling, and smelting facilities within the California Gulch Site including but not limited to the Arkansas Valley or "A-V" Smelter, the Yak Tunnel, the Leadville Milling Unit, and numerous mill sites and mining claims on which there are extensive underground workings connecting with and draining into the Yak Tunnel and on which there are, or prior to being remediated under CERCLA were, various mine wastes including slag, flue dust, mill tailings (including the so-called Apache Tailings), slimes (including the so-called Colorado Zinc Lead Mill tailings), and waste rock – all of which constitute "facilities" within the meaning CERCLA. Hazardous substances, within the meaning of CERCLA, including cadmium, copper, lead, and zinc, as well as low pH/acidic effluent, have been "released," and may be continuing to be "released," within the meaning of Section 101(22), 42 U.S.C. § 9601(22), at or from one or more of those facilities and the California Gulch Site.

30. On March 29, 1989, EPA issued a Unilateral Administrative Order (which was amended on April 30, 1993 and on June 15, 1993), to Asarco, Newmont Mining Corporation, Resurrection Mining Company, and the Res-Asarco Joint Venture, to implement EPA's selected remedial action for the Yak Tunnel Operable Unit, subsequently defined as Operable Unit 1 ("OU1") for the California Gulch Site, from which acid mine drainage, as well as surges of highly contaminated sediments, were being discharged to the California Gulch drainage and the upper Arkansas River. Pursuant to that UAO, Asarco, as the managing partner of the Res-Asarco Joint Venture, built, operated, and maintained the Yak Tunnel Water Treatment Plant, associated surge pond, and partially rehabilitated and partially plugged the Yak Tunnel. EPA recovered its response costs associated with OU1 through January 31, 1991 pursuant to Partial Consent Decree between the United States, the States of Colorado, and the mining companies approved and entered on September 4, 1993 in Civil Action No. 86-C-1675 (consolidated with Civil Action No. 83-C-2388), in the United States District Court for the District of Colorado.

31. Asarco was solely obligated pursuant to a Consent Decree entered in the same case on August 26, 1994 (the "1994 Leadville Decree") to complete the response actions for Operable Units 5, 7, and 9 of the California Gulch Site, and pay for EPA's future associated response costs. Claims against Asarco with respect to OU1, as well as Operable Units 11 (the area within the Arkansas River flood plain) and 12 (site-wide surface and ground water quality) were reserved, and not resolved. Claims for natural resource damages and the costs of assessing such damages were also reserved.

32. Pursuant to the 1994 Leadville Decree, Asarco owes the United States \$758,535 for costs that EPA incurred and paid with respect to Operable Units 5, 7, and 9 at the California

Gulch Site through December 31, 2004, plus interest accrued on such amounts through December 31, 2005 in the amount of \$51,256, for a total of \$809,791.

33. EPA has incurred a total of \$8,386,980 in response costs, not inconsistent with the NCP, for which Asarco is jointly and severally liable under Section 107(a) of CERCLA for the following: (a) \$1,406,949 for oversight and other response costs associated with the Yak Tunnel/OU 1 after January 31, 1991 to June 30, 2005; (b) \$5,804,426 for response costs for OU 11 from after January 31, 1991 to July 1, 2005; and (c) \$1,175,605 for response costs at OU 12 after January 31, 1991 to July 1, 2005. Other parties, including Newmont Mining Corporation, Resurrection Mining Company, and the Res-Asarco Joint Venture, are or may also be jointly and severally liable for such response costs.

34. Releases of hazardous substances, including but not limited to cadmium, copper, lead, and zinc, from the California Gulch Site, such as those from facilities referred to above in paragraph 29, have caused documented injuries to migratory birds protected under the Migratory Bird Treaty Act, and to soils and vegetation of public lands administered by DOI's Bureau of Land Management within the so-called "11-mile reach" of the Arkansas River 500-year flood plain of the river's confluence with the California Gulch drainage, and potentially to sediments in the Pueblo reservoir approximately 160 river miles downstream of the California Gulch Site (collectively the "Upper Arkansas River Basin").

35. DOI has documented that identifiable migratory bird habitat, i.e., soils, sediments, waters of California Gulch and the Arkansas River, and aquatic insects which are prey for migratory birds within and below the 11-mile reach, has been severely injured into the early 1990s, decreasing substantially thereafter, but expected to continue into the future at a moderate level of loss. The injured habitat includes about 100 acres of lands covered by 165 deposits of

contaminated fluvial materials that are barren of vegetation, and about 1,096 acres of contaminated meadow and pasture lands flooded and irrigated by waters from the Arkansas River and impacted by the California Gulch Site.

36. DOI has incurred, through July 31, 2005, \$3,539,623 in costs in (a) assessing the injuries to, and destruction of, and loss of, natural resources principally within the so-called “11-mile reach” of the Arkansas River 500-year flood plain below the confluence with the California Gulch drainage; (b) screening potential injuries to natural resources within the California Gulch Site, air shed impacted by Asarco’s Arkansas Valley Smelter, the Pueblo Reservoir having fluvial deposits impacted by surges from the Yak Tunnel, and approximately 160 river miles of the Arkansas River basin between the California Gulch Site and the Pueblo Reservoir; and (c) participating in a cooperative process with the State of Colorado and its natural resource trustees, Asarco, Newmont Mining Corporation, Resurrection Mining Company, and the Res-Asarco Joint Venture, pursuant to a Memorandum of Understanding, to identify potential projects to restore, replace, or acquire the equivalent of impacted natural resources.

37. The assessment costs referred to in the preceding paragraph were incurred in response to the release of hazardous substances from facilities owned or operated within the California Gulch Site by, among others, Asarco. Asarco is jointly and severally liable for such reasonable cost of assessing injury, destruction, or loss attributable to such releases, pursuant to Sections 107(a)(1) and (2), & 107(a)(4)(C) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), & 9607(a)(4)(C). Other parties, including Newmont Mining Corporation, Resurrection Mining Company, and the Res-Asarco Joint Venture, are or may also be jointly and severally liable for such costs.



### **Cherokee County Superfund Site - OUs 3 & 4**

38. EPA placed the greater Cherokee County Superfund Site (“Cherokee County Site”) on the NPL in September 1983. The Cherokee County Site spans 115 square miles and represents the Kansas portion of the former Tri-State lead-zinc mining district. Contaminated media for the site include mining wastes, sediments, soils, groundwater, and surface water. The contaminants of concern are zinc, lead, and cadmium. The contamination was caused by lead and zinc ore mining and processing that began in Kansas in the mid-1800s and continued until 1970. Milling wastes, comprised of chat piles and tailings, are sources of the contaminants of concern. Because of the large geographic area of mining, the site was divided into seven subsites, which are encompassed in seven operable units.

39. In 1999, Asarco entered into a Remedial Design/Remedial Action Consent Decree which was approved and entered by the United States District Court for the District of Kansas in Civil Action No. 99-1399-WEB for the Baxter Springs (OU3) and Treece (OU4) subsites of the Cherokee County Site (the “Cherokee County OU3/OU4 Decree”). Pursuant to that decree, the Asarco and three other parties agreed to complete the environmental cleanup of the areas covered by the Cherokee County OU3/OU4 Decree, and to pay EPA’s costs of overseeing such work.

40. EPA incurred costs of overseeing work under the Cherokee County OU3/OU4 Decree not inconsistent with the NCP. EPA sent the settling defendants bills for EPA’s oversight costs. Asarco failed to pay its share of such costs. The unpaid balance, as of January 18, 2006 and for which Asarco is liable pursuant to the Cherokee County OU3/OU4 Decree, is \$27,373, plus interest.

### **Combination Mine Site**

41. The Combination Mine Site is a portion of the larger Black Pine Mining Complex. The Combination Mine Site is located about 10 miles northwest of Philipsburg, Montana, and is located within the Beaverhead-Deerlodge National Forest. The site includes the Combination Mine and a large tailings pond located mostly on private lands. The tailings pond had eroded and contaminated 1½ miles of Lower Willow Creek located on NFS lands administered by the Forest Service. High levels of mercury and heavy metals within and along the stream bank and riparian habitat are the apparent result of the mercury amalgamation process that was used to treat ore from the mine.

42. In 1990 Asarco acquired ownership of the Black Pine Mining Complex, including the Combination Mine Site. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, at and from the Combination Mine Site. Asarco is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as an owner and/or operator of the Combination Mine Site and associated tailings pond, which constitute “facilities” within the meaning of CERCLA.

43. The Forest Service has incurred, not inconsistent with the NCP, \$31,712 through December 21, 2005 in response costs at the Combination Mine Site in conducting an inventory of the site, researching potential liable parties, and to complete a Site Investigation, for which Asarco is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

### **East Helena Superfund Site**

44. EPA listed the East Helena Superfund Site (“East Helena Site”) on the NPL in 1984. The East Helena Site is located in Lewis & Clark County, Montana. Asarco “owned” and/or “operated” a primary lead smelter for more than 100 years in East Helena, Montana to the

present and an adjacent zinc plant from 1972 to the present, as well as related facilities, which are “facilities,” and from which there has been a “release” or “threat of release” of “hazardous substances,” including lead, arsenic, cadmium, and zinc, as these terms are defined by CERCLA. The East Helena Site includes those Asarco facilities and the surrounding area impacted by the airborne smelter fall-out contaminating soils with lead and ground water with arsenic.

45. Asarco entered into, as relevant to this POC, three settlements with the United States. First, Asarco entered into an Administrative Order on Consent (EPA Docket No. CERCLA VIII-89-10) on December 30, 1988 with EPA (“AOC 89-10”) under which Asarco agreed to complete certain studies pursuant to the NCP, and to reimburse EPA for its related CERCLA response costs. Second, Asarco entered into a Consent Decree with the United States which was approved and entered by the United States District Court for the Western District of Montana in Civil Action No. 90-46-H-CCL on December 27, 1990 (the “East Helena Decree”). Pursuant to the East Helena Decree, Asarco was obligated to, among other things, implement response actions for the East Helena Site selected in EPA’s November 1989 Record of Decision and reimburse EPA’s future response costs at the site. Third, in an EPA Administrative Order on Consent, EPA Docket No. VIII-91-17 (July 19, 1991) (“AOC 91-17”), Asarco agreed to conduct a removal action involving the clean-up of surrounding areas having levels of lead above 500 to 1,000 parts per million (“ppm”). AOC 91-17 was modified four times to address further residential and other properties with elevated levels of lead in soils.

46. EPA incurred, not inconsistent with the NCP, oversight and other response costs associated with overseeing Asarco’s compliance with the East Helena Decree, AOC 89-10, and AOC 91-17, as well as in performing other response actions at or in connection with the East Helena Site and for which Asarco is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. §

9607(a). Pursuant to the East Helena Decree, AOC 89-10, and AOC 91-17, EPA billed Asarco for response costs as follows.

Date of bill	Period covered	CD/AOC	Principal	Interest
4/19/02	1/1/00 - 1/31/02	East Helena CD	\$1,068	\$67
4/19/02	1/1/00 - 1/31/02	AOC 89-10	\$253,181	\$15,468
4/19/02	1/1/00 - 1/31/02	AOC 91-17	\$4,793	\$302
9/9/03	2/1/02 - 12/31/02	East Helena CD	\$30,533	\$995
9/9/03	2/1/02 - 12/31/02	AOC 89-10	\$74,105	\$2,425
9/9/03	2/1/02 - 12/31/02	AOC 91-17	\$167,424	\$5,499
11/1/04	1/1/03 - 12/31/03	East Helena CD	\$150	\$3
12/14/04	1/1/03 - 12/31/03	AOC 91-17	\$54,444	\$788
4/20/05	1/1/04 - 12/31/04	East Helena CD	\$540	\$4
4/20/05	1/1/04 - 12/31/04	AOC 91-17	\$39,422	\$267
Total			\$625,660	\$25,818

EPA also incurred, not inconsistent with the NCP, \$97,936 for oversight or other response costs for the period from January 1, 2005 to November 30, 2005, for which Asarco has not yet been billed, as follows: (a) \$468 for the East Helena Decree; (b) \$49,185 for AOC 89-10; and (c) \$48,283 for AOC 91-17. In addition, EPA has incurred, not inconsistent with the NCP, \$745,442 for response actions which, for accounting reasons, have not been directly attributed to the preceding settlement agreements for the time period from January 1, 2003 through November 30, 2005. Asarco owes the United States, for response costs at the East Helena Site, a total of \$1,469,038 for the period through November 30, 2005, plus interest. Through January 12, 2006, \$93,456 in interest has accrued on all billed amounts for a total due as of that date of \$1,562,494.

47. Asarco is further liable for stipulated penalties due to its violation of the AOC 91 17 and the East Helena Decree. Asarco failed to fund the East Helena Lead Education

and Abatement Program (“Lead Abatement Program”) pursuant to the requirements of AOC 91-17, which constituted a violation of the administrative order, for which Asarco is liable for stipulated penalties. On May 14, 2002, EPA billed Asarco for stipulated penalties in the amount of \$1,110,000 for the noncompliance period of January 1, 1002 to March 15, 2002. Such noncompliance, and the accrual of stipulated penalties, continued after March 15, 2002. Stipulated penalties also accrued under the East Helena Decree on account of Asarco’s failure to pay bills for oversight and other response costs when due. Stipulated penalties for such violations were not forgiven by the Consent Decree entered in the United States District Court for the District of Arizona in Civil Action No. CV 02-2079-PHX-RCB on February 3, 2003 (the “Arizona National Decree”). Through February 3, 2003, a total amount of \$6,018,000 has accrued as stipulated penalties for violations of the East Helena Decree and AOC 91-17.

#### **El Paso County Metal Survey Site**

48. The El Paso County Metal Survey Site includes over 1,100 residential properties within El Paso County, Texas, having elevated levels of arsenic and lead which EPA and the Texas Department of Health have determined to present an unacceptable public health hazard, principally to children.

49. At the time of disposal of hazardous substances Asarco owned and/or operated, within the meaning of CERCLA, a lead smelter, a copper smelter, a copper crushing plant, and a zinc plant in the city of El Paso, Texas, all of which constitute “facilities” within the meaning of CERCLA. The lead smelter, which was founded in 1887 by Robert S. Towne, became part of Asarco upon its formation in 1899. In 1911 a copper smelter was added to the operation, and a crushing plant was installed in 1928. A zinc plant was installed in 1948, which was shut down in 1982. Asarco suspended operations of the lead smelter in 1985, and the copper smelter and

crushing plant were placed on a care and maintenance mode in 1999. During the 100 years in which the smelters were operated, arsenic and lead, among other hazardous substances, were emitted into the air which constituted a “disposal” and “release” within the meaning of CERCLA, and which contaminated the surrounding area, including the residential properties comprising the El Paso Metal Survey Site.

50. On July 10, 2002, EPA issued a Time Critical Action Memorandum calling for the excavation and removal of contaminated soils at the following screening or “action” levels: 24 ppm for arsenic and 500 ppm for lead. On July 16, 2002 EPA notified Asarco of its CERCLA liability and requested that Asarco undertake the residential soils cleanup. Asarco declined. EPA commenced such work on November 13, 2002. On March 20, 2003, EPA issued a second Time Critical Action Memorandum to continue the residential soils cleanup using funds from the Superfund.

51. Through October 31, 2005, EPA incurred, not inconsistent with the NCP, \$17,135,459 in response costs associated with the investigation and removal actions to cleanup over 500 residential properties at the El Paso County Metal Survey Site. In addition, \$565,615 in interest has accrued on such costs through October 31, 2005, for a total of \$17,701,074, and for which Asarco is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### **Flux Mine Site**

52. The Flux Mine Site is located about 11 miles southeast of Patagonia, Arizona, in Santa Cruz County, Arizona and in the Coronado National Forest on land administered by the Forest Service. Asarco was the principal miner and operator of the Flux mine, from which zinc, and silver were mined, during the years 1940, 1942-1951, 1957-1958, and 1968-1986. There are

several points of acid mine drainage from the Flux Mine Site and its estimated 5000 feet of underground workings, and several waste rock dumps.

53. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, including the acid mine drainage having a low pH and elevated levels of cadmium, copper, lead, nickel, selenium, and zinc, and which has contaminated the stream below the Flux Mine. At the time of the disposal of hazardous substances, Asarco was an owner and/or operator of the Flux mine, waste rock piles, and the Flux Mine Site, all of which constitute “facilities” within the meaning of CERCLA.

54. The Forest Service has incurred response costs, not inconsistent with the NCP, at the Flux Mine Site for, among other things, conducting a preliminary assessment and site investigation, and in researching potentially liable parties under CERCLA. As of December 22, 2005, the Forest Service incurred \$10,575 in response costs at the Flux Mine Site. Asarco is liable for these costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### **Globe Site**

55. The Globe Site, also known as the Asarco Globe Plant, covers 89 contiguous acres located at 495 East 51<sup>st</sup> Avenue in north-central Denver, Colorado. At various times between 1899 and 1993, Asarco owned and/or operated a lead smelter at the site, or produced arsenic trioxide, cadmium, and occasionally thallium, indium, and other high purity metals, such as antimony, copper, and tellurium at the Globe Site. EPA proposed the site be included on the NPL in 1993, but subsequently deferred the listing because the State of Colorado, Department of Public Health and Environment (“CDPHE”) became the lead agency for the site.

56. In 1993, CDPHE adopted a record of decision selecting a remedy for the Globe Site. The State of Colorado and Asarco entered into a Consent Decree, approved and entered by

the United States District Court for the District of Colorado, on August 16, 1993 in Civil Action No. CV 83-C-2383 (the 1993 Globe Decree). Under the terms of the decree Asarco was required to remediate contaminated soils in residential properties surrounding the Globe Site.

57. At the time of disposal of hazardous substances Asarco owned and/or operated the Globe Site, or facilities at the Globe Site, which constitute a “facility” within the meaning of CERCLA. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA at or from the Globe Site. EPA incurred costs of overseeing work by Asarco pursuant to the 1993 Globe Decree. Asarco is liable for such costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

58. In the Arizona National Decree the United States released Asarco from liability for EPA’s environmental response costs at the Globe Site incurred prior to February 1, 2003. EPA incurred response costs after that date, including costs associated with coordinating CERCLA activities with CDPHE and in overseeing response actions at the Globe Site. For the time period after February 1, 2003 through December 31, 2005, EPA incurred, not inconsistent with the NCP, \$29,607 in response costs at the Globe Site, and for which Asarco is jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### **Golinsky Mine Site**

59. The Golinsky Mine is an abandoned copper mine located in the Shasta-Trinity National Forest near Redding California on NFS land administered by the Forest Service. Extensive development work was conducted at the Golinsky Mine, and between 3,078 and 4,000 tons of ore were produced at the mine by American Smelters Securities Company (“American Smelters”) during 1906 - 1907. Groundwater and surface seeps of acid mine drainage are flowing from mine workings, waste ore, and waste rock at the Golinsky Mine Site.



60. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, including the acid mine drainage having a low pH and elevated levels of copper, zinc, and cadmium, flowing into Little Backbone Creek which flows into Shasta Lake. Asarco is liable as the corporate successor-in-interest to American Smelters which is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a former owner and operator of the Golinsky Mine and associated mine workings and waste dumps at the time hazardous substances were disposed of, all of which constitute “facilities” within the meaning of CERCLA. American Smelter merged with and into Asarco on or about December 12, 1922, at which time Asarco assumed all of American Smelter’s assets and liabilities.

61. The Forest Service has incurred response costs, not inconsistent with the NCP, at the Golinsky Mine Site for, among other things, conducting a preliminary assessment and site investigation, a removal action including the installation of a plug in the mine, and a pilot study for passive water treatment of the acid mine drainage. As of December 21, 2005, the Forest Service incurred \$2,264,476 in response costs at the Golinsky Mine Site. Asarco is jointly and severally liable for such response costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### **Iron Mountain Mine Site**

62. The Iron Mountain Mine/Flat Creek Site (“Iron Mountain Site”) includes an abandoned mine and mill site located approximately 3 ½ miles north of Superior, Montana and within the Lolo National Forest on NFS lands administered by the Forest Service. The mine and mill operated from 1909 to 1930 and from 1947 to 1953, producing silver, gold, lead, copper, and zinc ores. The majority of the tailings were disposed of into, or were washed down and onto, the Flat Creek floodplain.

63. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, including arsenic, copper, mercury, lead, zinc, cadmium, manganese, and antimony, at or from the mill site and associated tailings, and acid mine drainage from adits at the mine. At the time of disposal of hazardous substances Asarco owned and/or operated the Iron Mountain Mine and associated adits, mill, mine waste rock and tailings, all of which constitute “facilities” within the meaning of CERCLA. The site has been abandoned since 1954. In 1988, Asarco conducted some reclamation activities at the site, including removing some tailings from Flat Creek and placing them in the Iron Mountain Mine impoundment, and revegetating that impoundment.

64. The Forest Service has incurred response costs, not inconsistent with the NCP, at the Iron Mountain Site for, among other things, conducting a Site Investigation and replacing a culvert in the drainage to mitigate releases of hazardous substances. As of December 22, 2005, the Forest Service incurred \$83,519 in response costs at the Iron Mountain Site. Asarco is liable for such response costs as the past and/or current owner and/or operator under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### **Jack Waite Mine Site**

65. The Jack Waite Mine Site is located in the Coeur d’Alene National Forest east of Prichard, Idaho at the Idaho-Montana border on NFS land administered by the Forest Service. The site is spread out along Tributary Creek, which is a tributary to the East Fork of Eagle Creek and eventually the Coeur d’Alene River. The site includes several mine adits, a mill building, four tailings ponds scattered over several miles along waterways, and at least one waste rock pile.

66. Asarco obtained a 40-year lease to the Jack Waite Mine, and mined and milled lead, zinc, silver and gold ore intermittently at the site from 1934 to 1961, and disposed of

hazardous substances. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, at and from the Jack Waite Mine Site. Asarco is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past owner and/or operator of the Jack Waite Mine, associated mine workings, mill, and mine waste including tailings piles, all of which constitute “facilities” within the meaning of CERCLA.

67. Asarco entered into an AOC with the Forest Service and EPA in March 2000. Among other things, Asarco agreed in the AOC to reimburse EPA and the Forest Service their response costs incurred in connection with the AOC.

68. The Forest Service incurred, not inconsistent with the NCP, \$116,539 through December 21, 2005, in response costs at the Jack Waite Mine, for which Asarco is obligated to reimburse the Forest Service pursuant to the terms of the AOC. This sum does not include interest or stipulated penalties.

#### **Omaha Lead Smelter Superfund Site**

69. EPA listed the Omaha Lead Superfund Site on the NPL in 2003. The site includes lead contaminated soils at residential properties, child care facilities, schools, and other residential-type properties that have been contaminated as a result of air emissions from lead smelting/refining operations. The site covers over 9,000 acres and affects over 90,000 residents of Omaha, Nebraska. Blood lead poisoning of young children, ages 6 and under, in some zip codes in eastern Omaha has been a significant problem, with up to 40% reported to have had elevated blood lead levels at the time EPA began work at this site.

70. The site is centered around downtown Omaha and the location of two lead processing facilities, the primary one being a lead refinery/smelter which Asarco operated from 1899 until 1997 ( the “Omaha Lead Smelter”). Asarco owned the land on which the Omaha Lead

Smelter was located after purchasing it from the prior owner, the Union Pacific Railroad Company, in 1946. Chemical “fingerprint” analysis of lead found in contaminated soils shows that lead from the Omaha Lead Smelter is the largest identifiable source of lead. The Douglas County Health Department (“DCHD”) began monitoring ambient air quality around the Omaha Lead Smelter in 1984. DCDH’s air monitoring routinely measured ambient lead concentrations greater than the 1.5 parts per billion (“ppb”) National Ambient Air Quality Standard (NAAQS) for lead as established under the Clean Air Act. The highest reported quarterly average was reported at 6.57 ppb. In the first quarter after Asarco closed the Omaha Lead Smelter in 1997 all the surrounding monitors reported ambient air quality for lead below the NAAQs, and Omaha finally became an attainment area for lead under the Clean Air Act.

71. On August 2, 1999, EPA issued an Action Memorandum documenting EPA’s decision that a time-critical removal action should be taken to mitigate the risk to human health at the site by excavating and replacing lead contaminated soils at child-care centers and residences. EPA selected a soil lead action level of 800 ppm for all residential properties and child care centers, and as low as 400 ppm depending upon the location of the property and the presence of a child having a blood lead concentration above a level of concern. EPA subsequently amended and issued additional Action Memoranda in August 2001, August 2002, November 2003, March 2004, and March 2005 to implement and coordinate two removal actions. EPA further issued an Interim Record of Decision (“ROD”) on December 15, 2004 continuing and enhancing a soil lead removal abatement project.

72. On August 24, 1999, EPA ordered Asarco to perform a time-critical removal action to address lead contaminated soils at child-care facilities and residences at the site. Unilateral Administrative Order, EPA Docket No. CERCLA-7-99-0029 (August 24, 1999).

Asarco refused to comply. EPA then undertook the initial removal action documented by EPA's August 2, 1999 Action Memoranda, and subsequent decision documents. On December 16, 2004, EPA issued a special notice letter to Asarco and three other companies requesting a good faith offer for the performance of the remedial action for the site as documented in EPA's ROD. After receiving no good faith offer, EPA contracted for and implemented the ROD using appropriated federal funds.

73. At various times from 1899 to the present, and when hazardous substances were disposed of, Asarco owned and/or operated, within the meaning of Sections 101(20) & 107(a) of CERCLA, 42 U.S.C. §§ 9601(20) & 9607(a), the Omaha Lead Smelter which is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a). Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including lead, were "released" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), from this facility, and which contaminated the surrounding area which comprise the Omaha Lead Smelter Superfund Site.

74. Through January 7, 2006, EPA incurred, not inconsistent with the NCP, \$53,521,298 in performing response actions at the Omaha Lead Smelter Site. Of this sum, however, EPA received a payment of \$6 million from the Asarco Environmental Trust established pursuant to the Arizona National Decree, so that EPA's net unreimbursed response costs for response actions completed at the Omaha Lead Smelter Site through December 10, 2005 are \$47,521,298, not including accrued interest. Asarco is jointly and severally liable for such costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). One or more other parties may also be jointly and severally liable for such costs.

75. In addition, by failing to comply with EPA's August 24, 1999 UAO, Asarco is liable for penalties pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and/or punitive damages as provided by Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), in an amount at least equal to, and up to three times, the amount of costs incurred by EPA to fund the action that Asarco was administratively ordered to complete. As EPA incurred a total of \$2,473,921 to fund the work Asarco was ordered to complete by EPA's August 24, 1999 UAO, Asarco's liability for treble damages is at least \$2,473,921 and up to but not more than \$7,421,763 (in addition to the response costs incurred by EPA).

**Stephenson-Bennett Mine Site**

76. The Stephenson-Bennett Mine Site comprises an area of approximately 150 acres located on the south side of State Highway 70 approximately one mile southwest of Organ and approximately five miles northeast of Las Cruces in Doña County, New Mexico. The site includes a former mine and former milling operations at which mine waste including tailings and milling waste containing lead and arsenic were disposed of, and which have migrated onto residential properties, ranching properties, and public lands.

77. There have been "releases" or "threatened releases" of "hazardous substances," including lead and arsenic, as these terms are defined by CERCLA, at and from the Stephenson-Bennett Mine Site. At the time of disposal of hazardous substances, Asarco owned and/or operated the Stephenson-Bennett Mine Site and associated mine dump and tailings disposal areas, all of which constitute "facilities" within the meaning of CERCLA. EPA estimates that

approximately 7% of the tailings were generated and disposed of during the time period that Asarco was the owner and/or operator of the Stephenson-Bennett Mine.

78. In response to a threat presented to human health and the environment from the release or threatened release of hazardous substances at or from the Stephenson-Bennett Mine Site, and specifically lead and arsenic contamination in areas where livestock were penned and children were exposed and found to have elevated blood lead levels, EPA undertook emergency removal actions to mitigate such risks including excavating tailings and contaminated soils. Through December 31, 2005 EPA incurred, not inconsistent with the NCP, a total of \$9,178,459 for those and other response actions at the Stephenson-Bennett Mine Site, with accrued interest interest of \$2,124,698, for a total of \$11,303,157.

79. Asarco is jointly and severally liable, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past owner and operator of the Stephenson-Bennett Mine Site and associated mine dump and tailings disposal areas, for all response costs EPA has incurred at the site. Other parties also are or may be jointly and severally liable to the United States for such response costs. For purposes of this POC only, the United States asserts that Asarco is liable to the United States for 7% of EPA's total response costs, in the amount of \$791,221, plus interest after December 31, 2005.

#### **Upper Blackfoot/Mike Horse Mine Site**

80. The Upper Blackfoot Mining District is located within the Helena National Forest about 25 miles northwest of Helena, Montana, on NFS land administered by the Forest Service. The largest mine onsite was the Mike Horse Mine located near the confluence of Beartrap Creek and Mike Horse Creek. The so-called Mike Horse Tailings Impoundment is also located at the site, and contains approximately 900,000 cubic yards of tailings which were sluiced from the mill

into Beartrap Creek and placed in the tailings pond, and which was mostly constructed between 1939 and 1954.

81. The Mike Horse Mining and Milling Company owned and operated the Mike Horse Mine starting in 1940, and shortly later expanded the mill to treat about 215 tons of ore per day from the mine. Asarco acquired the Mike Horse Mining and Milling Company in 1945, and operated the Mike Horse Mine and mill until 1955. After relinquishing ownership or control of the Mike Horse Mine properties around 1955, Asarco reacquired mining interests at the site in 1981.

82. There have been “releases” or “threatened releases” of “hazardous substances,” as these terms are defined by CERCLA, at and from the Mike Horse tailings pond, and from mine adits at the Mike Horse Mine Site. The Mike Horse tailings pond failed in 1975, releasing between 100,000 and 200,000 cubic yards of tailings into the headwaters of the Upper Blackfoot River. The tailings impoundment continues to leak, tailings are eroding from the Mike Horse tailings pond at an increasing rate, and there is a risk of failure of the tailings dam. Asarco is liable as a past and/or current owner and/or operator of the Mike Horse Mine Site, associated mine workings/adits, mill, and mine waste including the Mike Horse tailings impoundment, all of which constitute “facilities” within the meaning of CERCLA. At the time of disposal of hazardous substances, Asarco owned and/or operated some or all of such facilities.

83. Asarco entered into an Administrative Order on Consent with the Forest Service in December, 2002. Among other things, Asarco agreed in the AOC to complete an Engineering Evaluation/Cost Analysis, and to reimburse the Forest Service’s response costs incurred in connection with the AOC.



84. The Forest Service incurred, not inconsistent with the NCP, \$67,628 through December 23, 2005, in response costs at the Mike Horse Mine Site and in connection with the AOC, for which Asarco is obligated to reimburse the Forest Service pursuant to the AOC. This sum does not include interest or stipulated penalties.

**Vasquez Blvd./Interstate-70 Superfund Site (OU2)**

85. The Vasquez Blvd./Interstate-70 Superfund Site (the VB/I-70 Site) comprises approximately 4.5 square miles in north-central Denver, Colorado. EPA placed the VB/I-70 Site on the NPL in 1999. Operable Unit 1 includes residential areas surrounding the historic smelters at the site and which have elevated levels of lead and arsenic in soils. Operable Unit 2 consists of the former Omaha & Grant Smelter site which covers approximately 50 acres next to the South Platte River south of Interstate 70.

86. The Omaha & Grant Smelter operated in Denver from 1882 until 1902 as a lead smelter. Upon its organization in 1899 Asarco acquired the Omaha & Grant Smelter. The Omaha and Grant Smelter, and the site upon which it was located and which had been contaminated by lead smelting operations, constitute “facilities” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a). Asarco sold various portions of the Omaha and Grant Smelter and the property on which it was located between 1920 and 1947. Asarco owned and/or operated, within the meaning of Sections 101(20) & 107(a) of CERCLA, 42 U.S.C. §§ 9601(20) & 9607(a), the Omaha & Grant Smelter and the site upon which it was located. A subsurface investigation in the area surrounding the Omaha & Grant Smelter detected elevated levels hazardous substances including arsenic, copper, lead, and zinc.

87. On September 13, 2001, EPA entered into an AOC with Asarco, EPA Docket No. CERCLA-08-2001-13 (the “2001 AOC”), under which Asarco agreed to conduct a RI/FS for

OU2 of the VB/I-70 Site, pay EPA's past response costs in the amount of \$36,269, and pay EPA's future response costs relating to the RI/FS. Asarco failed to complete the RI/FS, to reimburse EPA's past response costs, and to reimburse EPA's oversight costs through September 30, 2004 which EPA billed Asarco on January 31, 2005. EPA has incurred, not inconsistent with the NCP, a total of \$224,871 in response costs at OU2 of the VB/I-70 Site through December 31, 2005, plus interest, pursuant to the 2001 AOC.

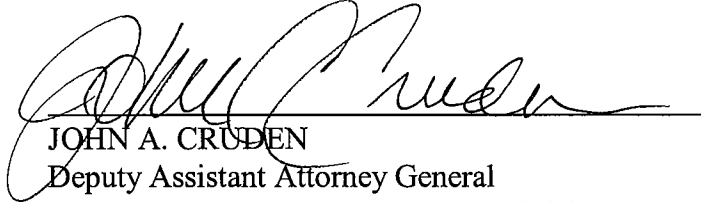
88. Asarco entered into a Consent Decree with the United States which was approved and entered by the United States District Court for the District of Colorado on January 21, 2004 in Civil Action No. 04-PB-2070 (the "VB/I-70 Decree"). The VB/I-70 Decree provided for Asarco to mitigate contaminated soil conditions at 100 residential yards, subject to available funding, and to pay EPA's costs of overseeing such work. EPA incurred, not inconsistent with the NCP, \$122,305 in overseeing work completed in 2005 which Asarco is obligated to pay pursuant to the VB/I-70 CD, plus interest.

#### **Miscellaneous**

89. This POC is filed as a secured claim, and to the extent the United States may be found to not have a secured claim, then as a general unsecured claim. This POC reflects certain liabilities of Asarco to the United States. The United States reserves the right to amend this claim to assert additional liabilities. Except as stated in this POC, no further judgments against Asarco have been rendered on this POC. This POC is without prejudice to any other


right of setoff under 11 U.S.C. § 553 against any other claim or debt owed (if any) to the Debtor by any other federal agency.

Respectfully submitted,



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# SUMMARY OF PAST COSTS

Site	Agency	Description	Dates Covered	Amount
Azurite Mine Site	USDA	Response costs payable under an AOC	Thru 11/30/2005 (principal only)	\$219,410
Black Pine Mine Site	USDA	Response costs	Thru 9/30/2005 (principal only)	\$21,500
Bunker Hill - Box	EPA	Response costs payable under 1994 Bunker Hill Decree	Most thru 3/31/2005 (principal only)	\$13,359,140
Bunker Hill - Box	EPA	Response costs for oversight of removal actions Jack Waite, Gem Portal, & Osborn Floodplain (\$3,595 payable under AOCs)	Most thru 7/31/2005	\$5,194
Bunker Hill - Basin OU3	EPA	22% of total response costs per Court's divisibility ruling	Thru 7/31/2005	\$17,518,926
Bunker Hill - Basin	DOI	22% of total NRD assessment costs per Court's divisibility ruling	Thru 8/31/2003	\$2,553,503
Bunker Hill - Basin	USDA	22% of total NRD assessment costs per Court's divisibility ruling	Thru 12/21/2005	\$122,241
Bunker Hill - Basin	USA	22% of total enforcement costs per Court's divisibility ruling	Thru 8/20/2005	\$5,158,516
California Gulch Site - OUs 5, 7, & 9	EPA	Response costs payable under 1994 Leadville Decree	Thru 6/30/2005 or 7/1/2005 (principal only)	\$809,791
California Gulch Site - OUs 1, 11, & 12	EPA	Response costs	Thru 6/30/2005 or 7/1/2005 (principal only)	\$8,386,980

California Gulch Site - Upper Arkansas River Basin	DOI	NRD assessment costs	Thru 7/31/2005 (principal only)	\$3,539,623
Cherokee County Site - OUs 3 & 4	EPA	Response costs payable under the Cherokee County OU3/OU4 Decree	Thru 1/18/2006 (Principal only)	\$27,373
Combination Mine Site	USDA	Response costs	Thru 12/21/2005 (principal only)	\$31,712
East Helena Site	EPA	Response costs payable under East Helena Decree AOC 89-10, AOC 91-17 and unallocable	Principal (\$1,469,038) thru 11/30/2005 & interest (\$93,456) thru 1/12/2006	\$1,562,494
East Helena Site	EPA	Stipulated penalties for violations of AOC 91-17 and East Helena Decree	Thru 2/3/2003	\$6,018,000
El Paso County Metal Survey Site	EPA	Response costs	Principal (\$17,135,459) & interest (\$565,615) thru 10/31/2005	\$17,701,074
Flux Mine Site	USDA	Response costs	Thru 12/22/2005 (principal only)	\$10,575
Globe Site	EPA	Response costs after 2/1/2003	Thru 12/31/2005 (principal only)	\$29,607
Golinsky Mine Site	USDA	Response costs	Thru 12/21/2005 (principal only)	\$2,264,476
Iron Mountain Mine Site	UDSA	Response costs	Thru 12/22/2005 (principal only)	\$83,519

Jack Waite Mine Site	USDA	Response costs payable under March 2000 AOC	Thru 12/21/2005 (principal only)	\$116,539
Omaha Lead Smelter Site	EPA	Response costs (principal only)	Thru 12/10/2005 (principal only)	\$47,521,298
Omaha Lead Smelter Site	EPA	Minimum statutory penalty for noncompliance with August 24, 1999 UAO		\$2,473,921
Stephensen-Bennett Mine Site	EPA	Response costs (at a 7% equitable allocation share)	Thru 12/31/2005 (principal only)	\$791,221
Upper Blackfoot Mining District/Mike Horse Mine Site	USDA	Response costs payable under December 2002 AOC	Thru 12/23/2005 (principal only)	\$67,268
Vasquez Blvd/I-70 Site	EPA	Response costs payable under 2001 AOC and VB/I-70 Decree	Thru 12/31/2005 (principal only)	\$347,176
Total				\$130,741,077